

APPEAL NO. 021167
FILED 27, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 3, 2002, and January 16, 2002, but reset to March 8, 2002. The appellant's (carrier) attorney failed to appear for the hearing scheduled for March 8, 2002. A show cause hearing and hearing on the merits was held on April 19, 2002, with the record closing on April 22, 2002. The hearing officer decided that the respondent (claimant) sustained a repetitive trauma injury on _____; that she gave timely notice of her injury to her employer; that the injury extended to her left shoulder, left elbow, left middle finger, and right forearm; and that she had disability from her injury for the period from July 20 through September 18, 2001. The carrier appeals, complaining that the claimant's exhibits were improperly admitted over its objection for lack of timely exchange. The claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

EXCHANGE OF DOCUMENTS

The benefit review conference (BRC) was held on November 9, 2001, and the claimant's exhibits were mailed to the carrier on November 21, 2001, the Wednesday before Thanksgiving. The carrier said that it received the exhibits November 26, and asserted that this was not a timely exchange. The hearing officer, noting that the carrier had had plenty of time to review the documents prior to the current CCH, also noted that they had been mailed in time to have been received timely. The hearing officer stated on the record that she viewed this as a timely exchange. We agree that the exchange was timely and, therefore, a good cause finding was not required.

In Texas Workers' Compensation Commission Appeal No. 001665, decided August 30, 2000, the Appeals Panel applied the Government Code provisions that control when the last date for taking an action falls on a Saturday, Sunday, or holiday. In this case, the 15th day after the BRC was November 24, 2001, a Saturday. Therefore, the due date carried over until Monday the 26th, the date that the carrier said the documents were received. Exchange was therefore timely made.

REPETITIVE TRAUMA INJURY, DATE OF INJURY, DISABILITY

Issues relating to the merits of the repetitive trauma injury claim, and whether the claimant's neck problems stemmed from an earlier injury, involved matters of conflicting evidence for the hearing officer to weigh and consider as the sole judge of the weight and credibility, materiality, and relevance of the evidence. Section 410.165(a). We

cannot agree that there is a great weight of evidence against the determinations of the hearing officer on these issues, and affirm the decision and order.

GOOD CAUSE

The hearing officer did not abuse her discretion in finding that the carrier did not have good cause for the failure to appear at the previously scheduled CCH. Ultimately, it is the counsel for the party who bears responsibility for the clerical practices of the office, and the hearing officer determined that in this case the misfiling of the notice of hearing did not constitute good cause. We will not set aside this determination on appeal.

For the reasons set forth above, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ACE USA/OR** and the name and address of its registered agent for service of process is

**MS. ROBIN MOUNTAIN
CLAIMS VICE PRESIDENT, ACE/USA
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Roy L. Warren
Appeals Judge